the Interstate Commerce Commission at the time of filing the schedule of rates and fares, as required by the Act of June 29, 1906—the neglect to file making this feature of the tickets illegal and void and its violation no basis for an injunction. The case of *Railroad Co.* v. *Bitterman* was appealed to the Supreme Court, where it was affirmed without reservation. *Marcus K. Bitterman et al., petitioners,* v. *Louisville & Nashville Railroad Co.* (1907), 28 Sup. Ct. Rep. 91. The business of dealing in non-transferable reduced-rate excursion tickets for profit, to the injury of the railroad, is held to be an actionable wrong. The wanton disregard of the rights of the carrier constitutes legal malice on the part of the scalper, who stands in the position of one who maliciously induces a breach of contract. J. C. H.

THE BASIS OF EQUITABLE JURISDICTION IN CASES OF FRAUD.—The case of *Beaton* v. *Inland Township et al.* (1907), — Mich. —, 113 N. W. 361, suggests the discussion as to the source of the jurisdiction of courts of equity in cases of fraud. An outgoing township treasurer induced the incoming treasurer, who was the petitioner in the case, to sign a receipt for a sum of money greater than that actually turned over to him, by representing that certain vouchers which were among the papers turned over were uncanceled, whereas as a matter of fact he had already received credit for them in an accounting with the township board. The trial court decreed the cancellation of the receipt, and this was affirmed on appeal by a divided court, the majority holding that the case was governed by *Hancock Life Ins. Co.* v. *Dick* (1897), 114 Mich. 337, 43 L. R. A. 566; *Ins. Co.* v. *Blaine* (1906), 144 Mich. 218, *Macey* v. *Macey* (1906), 143 Mich. 138, 5 L. R. A. (N. S.) 1036. There were three dissenting judges, and their dissent was based on the ground that the petitioner was only liable to the township for the amount turned over to him, that the receipt was only evidence of that amount, which might be contradicted by parol, and "the mere fact that a receipt is given at the conclusion of an alleged fraudulent transaction relating to personal property is not enough to establish the jurisdiction of a court of equity to investigate the transaction for the purpose of canceling or refusing to cancel the receipt."

A reference to the Michigan cases on which the majority relied *seems* to indicate that the Michigan court regards fraud as of itself an independent ground of equitable jurisdiction.

In England the rule seems firmly established that courts of equity always *have* jurisdiction in a case of fraud, except in cases of fraudulent wills, and the jurisdiction is there considered as existing, not because of anything peculiar in the nature of fraud itself, but for historical reasons. The doctrine is that, inasmuch as the only relief to be had in cases of fraud prior to the invention of the special action on the case, and its offshoots, assumpsit and trover, was in equity, that the gradual acquisition by law courts of jurisdiction to grant relief against fraud through these actions merely gave a concurrent remedy, and, in accordance with familiar principles, could not operate to deprive the equity courts of their ancient jurisdiction. The question which presents itself to an English court of equity under this doctrine is not whether or not jurisdiction *exists,* but rather, whether or not it will be

exercised. These views are upheld in *Colt et al.* v. *Woollaston et al.* (1723), 2 P. Wms. 154; *Ramshire* v. *Bolton* (1869), L. R. 8 Eq. 294; *Evans* v. *Bicknell* (1801), 6 Vesey 174, 182; *St. Aubyn* v. *Smart* (1868), L. R. 3 Ch. App. 646; *Blair* v. *Bromley* (1846), 5 Hare 542, 2 Phill. Ch. 354; *Burrowes* v. *Lock* (1805), 10 Ves. 470; *Green* v. *Barrett* (1826), 1 Sim. 45; *Cridland* v. *Lord De Mauley* (1847), 1 De Gex & S. 459; and in *Slim* v. *Croucher* (1860), 1 De Gex F. & J. 518, which, although overruled on other points by *Derry* v. *Peek* (1889), 14 App. Cas. (H. L.) 337, is still regarded as authority on the question of the basis of equity jurisdiction in cases of fraud. In that case the rule is expressed in the apt phraseology of TURNER, L. J., as follows (p. 528): "I am also of opinion that this decree is right, and I think that, if we were to grant any relief on this appeal, we should be very much narrowing an old jurisdiction of this court, by confining it to cases in which the jurisdiction has been exercised. We should, I think, be taking the cases as the measure of the jurisdiction, instead of as examples of that jurisdiction."

In America the influence of constitutional provisions guarantying the right of trial by jury, of federal and state statutes limiting equitable jurisdiction to cases where there is no adequate remedy at law, and of mistaken notions as to the true basis of equitable jurisdiction in cases of this class, has made the question a much vexed one. In some of the older decisions the English view seems to have been adopted. *Bacon* v. *Bronson* (1823), 7 Johns. Ch. (N. Y.) 194; *People* v. *Houghtaling* (1857), 7 Cal. 348; *Lewis* v. *Tobias* (1858), 10 Cal. 574; *Butler* v. *Durham* (1847), 2 Ga. 413; see, also, *Eggers* v. *Anderson* (1901), 63 N. J. Eq. 264.

But the prevailing American rule seems to be, as expressed by POMEROY, in his EQUITY JURISPRUDENCE (Vol. II, § 914), that "the exclusive jurisdiction to grant purely equitable remedies, such as cancelation, will not be exercised, and the concurrent jurisdiction to grant pecuniary recoveries does not exist, in any case where the legal remedy, either affirmative or defensive, which the defrauded party might obtain, would be adequate, complete and certain." Some of the courts reach this conclusion on the erroneous assumption that courts of law always had jurisdiction to give relief in some cases of fraud, and that it is only in those cases in which the legal remedy was inadequate that the equity courts had jurisdiction. Other courts reach the same conclusion by interpreting the constitutional guaranty of right to trial by jury as an inherent limitation on the exercise of what would otherwise be a concurrent equitable jurisdiction. In the following cases this rule has been either expressly enunciated or has controlled the court in its assumption or rejection of jurisdiction:

Waddell v. *Lanier* (1878), 62 Ala. 347; *Tillison* v. *Ewing* (1888), 87 Ala. 350; *Merritt* v. *Ehrman* (1896), 116 Ala. 278; *Sherwood* v. *Salmon* (1813), 5 Day 439; *Skinner* v. *Bailey* (1829), 7 Conn. 496; *Buxton* v. *Broadway* (1878), 45 Conn. 540; *Hoey* v. *Jackson* (1893), 31 Fla. 541; *County of Ada* v. *Bullen Bridge Co.* (1897), 5 Ida. 188; *Gore* v. *Kramer* (1886), 117 Ill. 176; *Black* v. *Miller* (1898), 173 Ill. 489; *Schack* v. *McKey* (1901), 97 Ill. App. 460; *Vannatta* v. *Lindley* (1902), 198 Ill. 40; *Schenehon* v. *Life Ins. Co.* (1902), 100 Ill. App. 281; *Fitzmaurice* v. *Mosier* (1888), 116 Ind. 363; *Hogue-*

land v. *Arts* (1901), 113 Ia. 634; *Hardwick* v. *Forbes's Adm.* (1808), 1 Bibb. (Ky.) 212; *Blackwell* v. *Oldham* (1836), 4 Dana (Ky.) 195; *Woodman* v. *Freeman* (1846), 25 Me. 531; *Farmington* v. *Bank* (1892), 85 Me. 46; *Sugar Refining Co.* v. *The Campell & Zell Co.* (1896), 83 Md. 36; *Negley* v. *Co.* (1898), 86 Md. 692; *Hubbell* v. *Currier et al.* (1865), 10 Allen 333; *Fickett* v. *Durham* (1875), 119 Mass. 159; *Fuller* v. *Percival* (1879), 126 Mass. 381; *Anthony* v. *Valentine* (1881), 130 Mass. 119; *Teft* v. *Stewart et al.* (1875), 31 Mich. 367; *Turnbull* v. *Crick* (1895), 63 Minn. 91; *Garrett* v. *R. R. Co.* (1844), 1 Freeman (Miss.) 70; *Learned* v. *Holmes et al.* (1873), 49 Miss. 290; *Miller* v. *Scammon* (1873), 52 N. H. 609; *Krueger* v. *Armitage* (1899), 58 N. J. Eq. 357; *Bradley* v. *Bosley* (1845), 1 Barb. Ch. 125; *Allerton* v. *Belden* (1872), 49 N. Y. 373; *Springport* v. *Bank* (1878), 75 N. Y. 397; *Ins. Co.* v. *Reals* (1879), 79 N. Y. 202; *Trimble* v. *Mfg. Co.* (1901), 10 Okla. 578; *Smith* v. *Griswold* (1877), 6 Ore. 440; *Benson* v. *Keller* (1900), 37 Ore. 120; *Edelman* v. *Latshaw* (1894), 159 Pa. St. 644; *Rogers* v. *Rogers* (1892), 17 R. I. 623; *Glastenbury* v. *MacDonald* (1872), 44 Vt. 450; *Johnson* v. *Hendley* (1816), 5 Munf. (Va.) 219; *Green* v. *Spaulding* (1882), 76 Va. 411; *Buck* v. *Ward* (1899), 97 Va. 209; *Johnson* v. *Swanke* (1906), 128 Wis. 68. The situation in the federal courts is controlled by statute. Rev. Stat., § 723, *Buzard* v. *Houston* (1886), 119 U. S. 347.

In its recent decisions, especially those on which the majority rely in the principal case, the Michigan court has departed, in spirit at least, from the reasoning of GRAVES, C. J., in *Teft* v. *Stewart,* supra, in which the prevailing American rule was indorsed. That court seems now to regard itself as almost bound to grant purely equitable relief, such as cancellation, whenever fraud is present and such relief is prayed for, notwithstanding the entire adequacy of the legal remedy. Whenever the exclusive equitable jurisdiction is thus invoked, fraud of itself is regarded as the jurisdictional fact. The same doctrine has been more or less clearly enunciated in other American cases, among them the following:

Brittin v. *Crabtree* (1859), 20 Ark. 309; *Myrick* v. *Jacks* (1878), 33 Ark. 425; *Bush* v. *Ry. Co.* (1905), 76 Ark. 497; *Mason* v. *Jones* (1848), 7 D. C. 247; *Tripp* v. *Lowe's Adm.* (1847), 2 Ga. 304; *Griffin* v. *Sketoe* (1860), 30 Ga. 300; *Markham* v. *Angier* (1876), 57 Ga. 43; *Arnold* v. *Grimes* (1849), 2 Greene (Ia.) 77; *Mershon* v. *Bank* (1831), 6 J. J. Marsh. (Ky.) 438; *Taymon* v. *Mitchell* (1849), 1 Md. Ch. Dec. 496; *McFarland* v. *Ry.* (1894), 125 Mo. 253; *Crane* v. *Conklin* (1831), 1 N. J. Eq. 346; *Ins. Co.* v. *Hutchinson et al.* (1870), 21 N. J. Eq. 107; *La Guen* v. *Gouverneur* (1800), 1 Johns. Cas. (N. Y.) 436; *Miller* v. *Hughes* (1890), 33 S. C. 530; *Appleton* v. *Harwell et al.* (1812), 1 Cooke (Tenn.) 241; *Bank* v. *Ry. Co.* (1856), 28 Vt. 470; *Wampler* v. *Wampler* (1878), 30 Grat. 454; *Kelly* v. *Riley et al.* (1883), 22 W. Va. 247; *Goss* v. *Lester* (1853), 1 Wis. 43.

A comparison of the three doctrines shows the following results:

(a) In England the jurisdiction of the court of equity in cases of fraud always *exists,* even to grant such relief as might be obtained in a court of law, but whether or not it will be exercised is another question.

(b) In America the prevailing rule is that a court of equity *cannot*

grant such relief as may be obtained in the law courts, and *will* not grant those peculiar remedies lying within its own exclusive jurisdiction in those cases of fraud in which the legal remedy is entirely adequate and complete.

(c) In those American courts in which the doctrine of the principal case is recognized, while the existence of fraud is not regarded as conferring jurisdiction on the equity courts to grant such remedies as may be obtained at law, yet purely equitable relief will not, perhaps must not, be denied if asked for, even where the legal remedy is entirely complete, adequate and certain.

In conclusion we may say that the true basis of equitable jurisdiction in cases of fraud, according to the English and prevailing American views, is the inadequacy of the legal remedy. C. A. D.